

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

IN RE:

)
) **MDL NO. 2753**
)

**ATRIUM MEDICAL CORP. C-QUR MESH
PRODUCTS LIABILITY LITIGATION**

) **MDL Docket No.**
) **1:16-md-02753-LM**
)

) **ALL CASES**
)

**PLAINTIFFS’ AND DEFENDANTS’ JOINT AGENDA
FOR JULY 9, 2020 STATUS CONFERENCE**

Now come the parties in the above-entitled multidistrict litigation and jointly submit the below agenda items, with a brief description of the items at issue, in preparation for the Status Conference to be held on July 9, 2020:

I. First Two Cases

A. Selection Process

Pursuant to this Court’s Order Regarding Selection of Plaintiffs for Trial and Miscellaneous Pre-Trial Matters (MDL Dkt. 1169), on May 14 and 15, 2020, the parties exchanged strikes and picks to arrive at the first two cases to be tried. Plaintiffs struck *Vollmar, Amy*, Case No. 1:17-cv-00704, and Defendants struck *Hicks, Daniel*, Case No. 1:17-cv-00070. Pursuant to this Court’s order, neither of these two cases is “eligible to be the first or second case tried.” (MDL Dkt. 1169 at 2.) On May 15, 2020, the parties selected the following two cases for the first two trials:

1. *Barron, Carrie*, Case No. 1:17-cv-00742-LM (by Plaintiffs),
2. *Hickinbottom, Juanita*, Case No. 1:17-cv-00713-LM (by Defendants).

The Court’s order, as subsequently amended with respect to deadlines, directed the parties to “attempt to reach agreement on the first case to be tried (between the two cases selected by the

parties), the manner of trial (e.g., length of trial), and the timing of the trial of the second case to be tried (which shall be the remaining case of the two cases selected by the parties). (MDL Dkt. 1169 at 3.) The Order directed the parties by July 8, 2020 to “submit a report to the Court indicating those matters as to which agreement has been reached and setting forth their positions as to all matters where agreement was not reached.” (MDL Dkt. 1169 at 3, MDL Dkt. 1203 at 4.) The parties have been conferring in good faith, as directed by the Court.

If agreement is not reached on the first case to be tried, the Court’s order provides that “the Court will select from the two cases chosen by the parties, and will address other matters of disagreement, on or before [July 13, 2020].” (MDL Dkt. 1169 at 3, MDL Dkt. 1203 at 4.)

The parties will submit their respective positions to the Court on July 8, 2020 in accordance with the Court’s Scheduling Order and the parties will be prepared to discuss their positions at the status conference or at a separate hearing, should the Court decide that a separate hearing on this topic would be helpful.

B. Status of *Hickinbottom*

On June 12, 2020, Defendants moved for summary judgment in *Hickinbottom*. (*Hickinbottom* Dkt. 85, 86.) Plaintiff did not oppose the motion. The parties will address the implications of this development in one of the first two trial cases and related deadlines in their July 8 submission.

II. Trial Logistics and Procedures

The parties would appreciate an opportunity to confer with the Court at the next status conference regarding various trial logistics and procedural issues. This will help the parties better prepare for trial and also to consider the Court’s offer of a bench trial.

III. Pending *Daubert* Motions

The Court ordered for the trial-pick cases that the parties file dispositive and *Daubert* motions by June 12. (MDL Dkt. 1203 at 4.) The parties have understood the Court's deadline to apply to *Daubert* motions for experts whom the parties have retained for trial and agree to reserve any objection to the admissibility of testimony that a party designates from a deposition or presents live at trial from a non-specially retained expert (such as a treating physician), including whether any such testimony is admissible opinion testimony under Fed. R. Evid. 701-702. The following *Daubert* motions are currently pending:

A. Plaintiffs' Motions to Exclude or Limit Defendants' Experts in *Barron*

1. Plaintiffs' Motion to Exclude the Testimony and Opinions of Dr. Stephen Spiegelberg, Ph.D. (*Barron* Dkt. 88);
2. Plaintiffs' Motion to Exclude the Opinions and Testimony of Defendant's Expert Dr. Steven R. Little, Ph.D. (*Barron* Dkt. 89);
3. Plaintiffs' Motion to Exclude the Opinions, Testimony and Report of Defense Expert Howard L. Beaton, M.D., FACS (*Barron* Dkt. 90, 91);
4. Plaintiffs' Motion to Exclude the Testimony and Opinions of Dr. Richard Jacobs, M.D., Ph.D. (*Barron* Dkt. 103).

B. Defendants' Motions to Exclude or Limit Plaintiffs' Experts in *Barron*

1. Defendants' Motion to Exclude Certain Opinions and Testimony of Howard Langstein, M.D. (*Barron* Dkt. 92, 93);
2. Defendants' Motion to Exclude Certain Opinions and Testimony pf Scott Guelcher, Ph.D. (*Barron* Dkt. 96, 97);
3. Defendants' Motion to Exclude Certain Opinions and Testimony pf Prof. Dr. Med. Uwe Klinge (*Barron* Dkt. 98, 99);
4. Defendants' Motion to Exclude Certain Opinions and Testimony of Russell F. Dunn, Ph.D. (*Barron* Dkt. 100, 101).

C. Plaintiffs' Motions to Exclude or Limit Defendants' Experts in *Hickinbottom*

1. Plaintiffs' Motion to Exclude the Opinions and Testimony of Defendant's Expert Dr. Steven R. Little, Ph.D. (*Hickinbottom* Dkt. 83);

2. Plaintiffs' Motion to Exclude the Testimony and Opinions of Dr. Stephen Spiegelberg, Ph.D. (*Hickinbottom* Dkt. 84).

D. Defendants' Motions to Exclude or Limit Plaintiffs' Experts in *Hickinbottom*

1. Defendants' Motion to Exclude Certain Opinions and Testimony of Scott Guelcher, Ph.D. (*Hickinbottom* Dkt. 87, 88);
2. Defendants' Motion to Exclude Certain Opinions and Testimony of Prof. Dr. Med. Uwe Klinge (*Hickinbottom* Dkt. 89, 90);
3. Defendants' Motion to Exclude Certain Opinions and Testimony of Russell F. Dunn, Ph.D. (*Hickinbottom* Dkt. 91, 92).

IV. Dispositive Motions

A. Defendants' Motions

1. Defendants' Motion for Summary Judgment in *Barron* (*Barron* Dkt. 94, 95);
2. Defendants' Motion for Summary Judgment in *Hickinbottom* (*Hickinbottom* Dkt. 85, 86).

B. Plaintiffs' Motion

1. Plaintiffs' Motion to Strike Affirmative Defenses to Long Form Complaints of Bellwether Plaintiffs, or Alternately, for Partial Summary Judgment (MDL Dkt. 1206).

V. Fact Witness Depositions

In the Trial Pool cases, the parties continue to conduct depositions of sales representatives. The parties agreed to reserve depositions of family members (other than spouses who are making claims) until such time as they are designated as trial witnesses. The parties have not yet commenced depositions of other family members, but will confer with respect to such depositions.

VI. Alternative Dispute Resolution

Plaintiffs believe that the current procedural posture of the bellwether cases and the MDL as a whole make the timing ideal for the parties to engage in Court-ordered mediation to determine the feasibility of resolving the cases in this MDL. Defendants note that the Court has already

established August 3, 2020 as the deadline for the parties to hold a settlement conference regarding the first case.

VII. Outstanding Meet and Confer Issues

The parties continue to meet and confer regarding various other matters, but none has reached an impasse requiring court intervention.

Dated: July 2, 2020

Respectfully submitted,

/s/ Katherine Armstrong

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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2020, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of Notice of Electronic Filing to all counsel of record.

/s/ Caroline Power
Caroline Power